

No. 15782/

United States
Court of Appeals
for the Ninth Circuit

ADOLPH G. HOFFMAN,

Appellant,

vs.

C. H. HALDEN, DR. DONALD E. WAIR, DR.
G. F. KELLER and DR. F. SYDNEY HAN-
SEN,

Appellees.

Transcript of Record

Appeal from the United States District Court for the
District of Oregon

FILED

JAN 10 1935



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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For Appellee Wair.

LEO SMITH,
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For Appellees.

In the United States District Court
for the District of Oregon

No. 7351

ADOLPH G. HOFFMAN,

Plaintiff,

vs.

C. H. HALDEN, DR. DONALD E. WAIR, DR.
G. F. KELLER and DR. F. SYDNEY HAN-
SEN,

Defendants.

SECOND AMENDED COMPLAINT

Plaintiff for a second amended cause of action against defendants, and each of them, complains and alleges as follows:

I.

That plaintiff and all defendants are citizens of the United States of America and of the State of Oregon, and are domiciled and reside in the State and District of Oregon, within this judicial district; that this Court has jurisdiction under the provisions of U.S.C. Title 28, Section 1331 and 1343.

II.

That this action arises under the United States Constitution and particularly Article I, Section 8, Article IV, Section 4, Amendments XIII and XIV, and Laws of the United States, Title 18 U.S.C. 231, 241, 242; Title 28 U.S.C. Section 1331 and 1343; Title 42 U.S.C. 1981-1988; Title 52 U.S.C. Section 203.

III.

That at all times herein mentioned Dr. F. Sydney Hansen, defendant above named, was and still is the County Health Officer of Multnomah County, State of Oregon.

IV.

That at all times herein mentioned defendant C. H. Halden was and is a Deputy County Health Officer of Multnomah County, State of Oregon, and acted as an agent and employee of defendant Dr. F. Sydney Hansen.

V.

That at all times herein mentioned Dr. Donald E. Wair, defendant above named, was and still is Superintendent of the Oregon State Mental Hospital at Pendleton, Oregon.

VI.

That at all times herein mentioned defendant Dr. George F. Keller was and still is a duly licensed and practicing physician within the State of Oregon.

VII.

That up to and including on or about the 18th day of June, 1956, in the State of Oregon the defendants, and each of them, conspired to deprive plaintiff of the equal protection of the laws of Oregon, to wit, the laws in relation to due and established tribunals, their organization, procedure and course of justice, and particularly those relating to the commitment of persons alleged to be metally ill; and further conspired to deprive plaintiff of those

rights provided under the Constitution and laws of the United States and particularly those set forth in paragraph II herein, and conspired to impede, hinder, obstruct and defeat the due course and due process of law and justice in the State of Oregon; and further conspired to deprive plaintiff of the rights, privileges and immunities secured by the Constitution and laws of the United States extended to citizens of the United States and particularly those set forth in paragraph II herein; that all of said acts and those set forth throughout this complaint were committed by defendants, and each of them, while acting under color and pretense of the statutes, ordinances, customs and laws of the State of Oregon and were not committed in their individual capacity.

VIII.

In furtherance of the object of the aforesaid conspiracy, defendants Halden and Hansen both acting under color and pretense of the statutes, ordinances, customs and laws of the State of Oregon and in wilful, malicious, intentional and discriminating misuse of their authority, that of their subordinates, and of other agencies of the State of Oregon, including the Circuit Court of Multnomah County, and Morningside Hospital, wilfully acting in concert with each other and with the other defendants, by themselves, their agents, servants and subordinates, each and all procuring, aiding and encouraging the other defendants, from January, 1952, up to and including on or about the 18th day of June, 1956, did purposely and systematically and intentionally

discriminate against plaintiff and subjected him to inequality of treatment in the following particulars which were not privileged or compelled by law:

1. Forcibly taking the plaintiff into custody on or about the 10th day of January, 1952, and again on or about the 5th day of August, 1952, without first informing plaintiff of the charges against him or of the nature of the proceedings with which he was confronted and a refusal to exhibit a citation which was in their custody;

2. Wilful deprivation of plaintiff's rights to select a physician of his own choice and direct contravention of the Laws of the State of Oregon;

3. Wilful refusal on or about the 10th day of January, 1952, and again on the 5th day of August, 1952, to permit plaintiff to call or communicate with his counsel in time for said counsel to appear in his behalf despite the fact that he was under the custody and control of said defendants;

4. Wilful failure to perform their duty to summon the District Attorney for Multnomah County or an Assistant District Attorney to be present at the hearing concerning plaintiff's competency and at a second hearing concerning his proposed commitment;

5. Wilful refusal to permit plaintiff to summon witnesses in his own behalf and wilful refusal to give him an opportunity to prepare a defense to the charges against him;

6. In intentionally confining plaintiff in an enclosure where persons charged with a crime were also incarcerated in direct violation of Oregon Law despite the fact that a suitable place for plaintiff's comfortable, safe and human confinement was available;

7. In threatening, coercing and intimidating plaintiff to prevent plaintiff from making any objections to his illegal detention;

8. In threatening and intimidating and coercing plaintiff from exercising and availing himself of due process and of the due course of the law;

9. In wilful failure to act in good faith and pursuant to the mandate of State law. In the wilful violation of the order of the Circuit Court of Multnomah County, Oregon, issued on or about August 4, 1952, requiring that the plaintiff be brought before said Court but instead defendants forcefully took plaintiff to a place of detention;

10. In the wilful refusal of defendants to communicate to the Circuit Court of Multnomah County, Oregon, that the order of the Court had been ignored and plaintiff was being held by them in a place of detention against his wishes;

11. In falsely filing a return of citation stating that they had followed the order of the Circuit Court of Multnomah County as set forth above;

12. In intentionally suppressing the facts regarding plaintiff's illegal detention from the proper

authorities and falsely assuring plaintiff that his liberty would not be impaired in any way by his attendance at the hearing conducted on or about January 10, 1952, despite the fact that said defendants were fully conversant with the purpose of said hearing;

13. In wilfully participating without objection or remonstrance of any kind despite the fact that it was within their power to remonstrate in the hearing conducted on or about January 10, 1952, as aforesaid which hearing was wholly devoid of due process and which was convened under statutes unconstitutional and void;

14. In causing all of thet money and property in plaintiff's possession to be forcefully extracted from his person on or about August 5, 1952, thereby depriving plaintiff of the means of communicating or employing counsel or any other person to appear in his behalf;

15. By directing plaintiff to remain silent and refuse to testify in his own behalf at the hearing which was held on or about the 10th day of January, 1952, in the Circuit Court of Multnomah County and by also informing plaintiff that it was unnecessary for him to obtain legal representation despite the fact that defendants knew that if plaintiff were not permitted to summon counsel that no one would appear at said hearing to protect or represent his interests;

16. By assisting and forcefully removing plaintiff from the Courtroom on January 10, 1952,

despite the fact that said defendants knew that various witnesses were preparing to testify adversely to plaintiff and that he would be given no opportunity to confront or hear the testimony of said witnesses;

17. In refusing to assist in the restoration of the money nad property forcibly seized from plaintiff's person on or about the 5th day of August, 1952;

18. In the wilful coercion and intimidation of plaintiff to prevent him from exercising his rights under the Constitution of the United States and the laws of the State of Oregon.

IX.

In furtherance of the objects of the aforesaid conspiracy defendant, Dr. George F. Keller, acting under color and pretense of the statutes, ordinances, customs and laws of the State of Oregon and in wilful, malicious, intentional and discriminating misuse of his authority and that of other agencies of the State of Oregon including the Circuit Court for Multnomah County and Morningside Hospital and wilfully acting in concert with the other defendants, each and all procuring, aiding and encouraging the other defendants, from January, 1952, up to and including on or about the 18th day of June, 1956, did purposely and systematically and intentionally discriminate against plaintiff and subject him to inequality of treatment in the following respects which were neither privileged nor compelled by law:

1. That although said physician had been specifically ordered by the Circuit Judge of Multnomah County, Oregon, to make an adequate medical and psychological examination of plaintiff as a preliminary and as an adjunct of the hearing conducted on or about the 10th day of January, 1952, concerning plaintiff's competency, said physician wholly failed and refused to comply with said order and instead made only a superficial examination;

2. That despite the fact that said physician realized that he did not have sufficient data to form an intelligent judgment concerning plaintiff's mental competency he nevertheless certified under oath to the Circuit Court that the plaintiff was incompetent despite the fact that a complete examination would have revealed that the contrary was the case; .

3. By intentionally signing a certificate containing information allegedly gathered concerning plaintiff by defendant Dr. Keller, or his subordinates, although he knew this information was extremely limited and he had made no effort to verify the same;

4. By signing and verifying a statement concerning the plaintiff which contained numerous inaccuracies;

5. By refusing and ignoring plaintiff's request at the time of said hearing that he be given an adequate mental examination as a necessary preliminary to any adjudication concerning his competency;

6. By suppressing the facts regarding plaintiff's illegal detention from the proper authorities and participating in a hearing without remonstrance or objections of any kind despite the fact that it was within the power of said defendant to object when it became apparent that said hearing was wholly lacking in due process and plaintiff was being denied the privileges and immunities and the equal protection of the laws available to all citizens under the Constitution of the United States;

7. In failing to remonstrate or object in any fashion despite the fact that it was within his power to object or remonstrate when plaintiff was given no opportunity whatever to cross-examine witnesses, was excluded from hearing the testimony of said witnesses, was given no opportunity to summon counsel or representative in his behalf or to testify, in any way except for a few preliminary statements, and that the District Attorney of Multnomah County was not present despite the statutory mandate to the contrary;

8. By wilfully participating without objection or remonstrance whatever despite the fact that it was in his power to remonstrate or object at a hearing which was convened under a statute unconstitutional and void;

9. By refusing to make an examination of plaintiff while he was held at Morningside Hospital despite the fact that it was his duty to do so on or about the 5th day of August, 1952;

10. By refusing to immediately release plaintiff while he was held at said Morningside Hospital since he was apprised of the fact that plaintiff had been confined under proceedings wholly void;

11. By refusing to direct that defendants Halden and Hansen deliver plaintiff to the Circuit Court of Multnomah County rather than to Morningside Hospital after he knew either personally or by and through his agents acting within the scope of their employment that defendants Halden and Hansen had wilfully disobeyed the order of the Court directing that said plaintiff be delivered to the Circuit Court rather than to Morningside Hospital on or about August 5, 1952.

X.

In furtherance of the object of the aforesaid conspiracy, defendant Dr. Donald E. Wair, acting under color and pretense of the statutes, ordinances, customs and laws of the State of Oregon and in wilful, malicious, intentional and discriminating misuse of his authority, that of his subordinates and other agents of the State of Oregon, including the Circuit Court for Multnomah County, wilfully acting in concert with the other defendants, by themselves, their agents, servants, and subordinates, each and all procuring, aiding and encouraging the others from on or about August 5, 1952, up to and including on or about the 18th day of June, 1956, in the State of Oregon:

1. Wilfully and intentionally forcefully restraining plaintiff from leaving the Oregon State Hospi-

tal, Pendleton, Oregon, despite the fact that he knew that defendant was being held illegally;

2. Wilfully and intentionally forcefully restraining plaintiff from leaving the Oregon State Hospital, Pendleton, Oregon, despite that fact that he knew plaintiff was not suffering from mental illness;

3. By suppressing the facts with regard to plaintiff's illegal detention from the proper authorities;

4. By refusing to permit plaintiff to correspond or communicate with appropriate authorities, except to a limited extent;

5. In threatening, coercing and intimidating plaintiff in an effort to force him to dismiss a civil action which plaintiff had filed in the Circuit Court of Multnomah County, Oregon.

XI

That the aforesaid acts on the part of the defendants and each of them, resulted in the confinement of plaintiff to the Oregon State Hospital, Pendleton, Oregon, from on or about the 5th day of August, 1952, to and including on or about the 23rd day of October, 1952, against his express wishes and to his great embarrassment and mental anguish and caused him to lose his wages in the sum of \$1200.00 for that period of time.

XII.

That as a result of the foregoing acts of the defendants, and each of them, plaintiff was harrassed,

intimidated, coerced, feared serious bodily harm, and suffered grievous humiliation, indignity and nervous shock, and was deprived of his constitutional rights and his rights under the laws of the United States as set forth hereinabove to his damage in the sum of \$100,000.00.

XIII.

Defendants, and each of them, in the acts above stated acted wantonly, maliciously and arbitrarily, by virtue whereof plaintiff is entitled to punitive damages in the sum of \$100,000.00.

Wherefore, plaintiff prays for judgment against the defendants, and each of them, for the sum of \$101,200.00 as actual damages; and the sum of \$100,000.00 as punitive damages; and for his costs and disbursements incurred herein.

ROTH & TILBURY,

/s/ ROGER TILBURY,

Of Attorneys for Plaintiff.

[Endorsed]: Filed March 4, 1957.

[Title of District Court and Cause.]

MOTION TO DISMISS SECOND AMENDED COMPLAINT

The defendant Dr. Donald E. Wair moves the court for an order as follows:

1. To dismiss as against the defendant Dr. Donald E. Wair the second amended complaint because said second amended complaint fails to state a claim against said defendant upon which relief can be granted.

2. To dismiss as against the defendant Dr. Donald E. Wair the second amended complaint because the claim alleged in said second amended complaint is barred by the applicable Oregon statute of limitations.

ROBERT Y. THORNTON,
Attorney General of Oregon,

/s/ PETER L. HERMAN,
Assistant Attorney General, Attorneys for the Defendant Dr. Donald E. Wair.

[Endorsed]: Filed March 12, 1957.

[Title of District Court and Cause.]

**MOTION OF DEFENDANT DR. G. F. KELLER
TO DISMISS SECOND AMENDED COMPLAINT**

Now comes defendant Dr. G. F. Keller and moves the court, pursuant to Rule 12(b) of the Federal Rules of Civil Procedure, for an order dismissing the second amended complaint upon the following grounds:

1. That said second amended complaint fails to state an enforceable claim against said defendant upon which relief can be granted by this court;

2. That this court lacks jurisdiction over the subject matter of this action;

3. That the claim alleged is barred by the applicable Oregon statute of limitations.

/s/ HUGH L. BIGGS,

/s/ CLEVELAND C. CORY,

Attorneys for Defendant Dr.
G. F. Keller.

Service admitted.

[Endorsed]: Filed March 22, 1957.

[Title of District Court and Cause.]

MOTION OF DEFENDANTS C. H. HALDEN
AND DR. F. SYDNEY HANSEN TO DIS-
MISS SECOND AMENDED COMPLAINT

Come now defendants C. H. Halden and Dr. F. Sydney Hansen and move the Court, pursuant to Rule 12(b) of the Federal Rules of Civil Procedure, for an order dismissing the second amended complaint upon the following grounds:

1. That the claim alleged is barred by the applicable Oregon statute of limitations.

2. That the second amended complaint fails to state an enforceable claim against said defendants upon which relief can be granted by this Court.

/s/ WILLIAM M. LANGLEY,
District Attorney, Multnomah County, Attorney for
Defendants C. H. Halden and Dr. F. Sydney
Hansen.

Points and Authorities

1. Plaintiff's claim is based upon the Federal Civil Rights laws. The statute of limitations applicable is the State of Oregon statute of limitations on tort, 42 USCA 1983, note 134. The state statute on tort is two years, ORS 12.110. An action is commenced when the defendant is served with summons, ORS 12.020. According to plaintiff's second amended complaint, his claim arose January 10, 1952, and not later than October 23, 1952. When a state statute of limitations as an integral part thereof specifies what must be done, the courts hold the statute is not tolled until action is brought as the statute directs, *Glebus vs. Fillmore*, 104 F. Supp. 902. Defendants were not served with summons until December 19, 1956.

2. The problem is not whether state law has been violated but whether an inhabitant of a state has been deprived of a federal right by one who acts under color of state law, *Screws vs. U. S.*, 325 US 91. The legal authority for mentally ill proceedings taken against plaintiff by the State of Oregon is set

forth in Chapter 426, O.R.S. All acts done by the within defendants were pursuant to order of the Circuit Court of Multnomah County, Oregon. The Federal Civil Rights laws do not authorize a claim against the within defendants, 232 F. 2d 288.

/s/ WILLIAM M. LANGLEY.

Affidavit of Service by Mail attached.

[Endorsed]: Filed April 10, 1957.

The United States District Court
for the District of Oregon

Civil No. 7351

ADOLPH G. HOFFMAN,

Plaintiff,

vs.

C. H. HALDEN, DR. DONALD E. WAIR, DR.
G. F. KELLER and DR. F. SYDNEY HAN-
SEN,

Defendants.

JUDGMENT OF DISMISSAL

The defendants, C. H. Halden, Dr. Donald E. Wair, Dr. G. F. Keller and Dr. F. Sydney Hansen, having filed motions, pursuant to Rule 12(b) of the Federal Rules of Civil Procedure, for an order dismissing the second amended complaint for the rea-

sons stated therein, including the ground that said second amended complaint fails to state a claim against each of the said defendants upon which relief can be granted, and the said motions having regularly come on for hearing before the court, plaintiff appearing by his attorney, Roger G. Tilbury, defendants Halden and Hansen appearing by their attorney, Robert Christ, and defendant Keller appearing by his attorneys, Hart, Spencer, McCulloch, Rockwood & Davies (Geoffery C. Hazard, of counsel), and the court having heard arguments of counsel and having considered the written briefs filed in support and in opposition to said motions, and the court being fully advised and being of the opinion that the several defendants' motions to dismiss on the ground that the second amended complaint fails to state a claim upon which relief can be granted should be sustained; it is

Ordered and Adjudged that the motions of the defendants Halden, Wair, Keller and Hansen to dismiss the second amended complaint on the ground that said pleading fails to state a claim upon which relief can be granted against said defendants, be and the same are hereby granted and the said second amended complaint is hereby dismissed; and it is further

Ordered and Adjudged that plaintiff take nothing by reason of this action, and the same is hereby dismissed in favor of the said defendants Halden, Wair, Keller and Hansen.

Done and dated this 14th day of October, 1957.

/s/ WILLIAM G. EAST,
United States District Judge.

Affidavit of Service by Mail attached.

[Endorsed]: Filed Oct. 15, 1957.

[Title of District Court and Cause.]

NOTICE OF APPEAL

To the Clerk of the above-entitled Court, and to C. H. Halden, Dr. Donald E. Wair, Dr. G. F. Keller and Dr. R. Sydney Hansen, defendants and to Hart, Spencer, McCulloch, Rockwood & Davies, attorneys for defendant Dr. G. F. Keller and to Leo Smith, District Attorney for Multnomah County and attorney for C. H. Halden and Dr. F. Sydney Hansen, and to Robert Thornton, Attorney General for Oregon and attorney for Dr. Donald E. Wair.

You and each of you will please take notice that Adolph G. Hoffman, the plaintiff above named, has hereby appealed to the United States Court of Appeals for the 9th Circuit thereof, from the judgment of dismissal made and entered on the 14th day of October, 1957, wherein the Court sustained the motions of defendants and dismiss the Second Amended Complaint on the grounds that the pleading purportedly fails to state a claim upon which relief can be granted against said defendants and

from the further order that the plaintiff take nothing by reason of this action, and dismissing the same in favor of defendants Halden, Wair, Keller and Hansen.

Dated at Portland, Oregon, this 21st day of October, 1957.

ALEXANDER, BUEHNER &
TILBURY,

By /s/ ROGER TILBURY,
Of Attorneys for Plaintiff.

[Endorsed]: Filed Oct. 22, 1957.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

United States of America,
District of Oregon—ss.

I, R. DeMott, Clerk of the United States District Court for the District of Oregon, do hereby certify that the foregoing documents consisting of Complaint; Order dismissing for failure to prosecute; Motion to set aside order of dismissal; Order vacating order of dismissal; Amended complaint; Order dismissing amended complaint; Order dismissing amended complaint; Second amended complaint; Motion to dismiss second amended complaint; Amended motion to dismiss second amended complaint; Motion of Defendant Dr. G. F. Keller to dismiss second amended complaint; Motion of De-

pendants C. H. Halden and Dr. F. Sydney Hansen to dismiss second amended complaint; Judgment of dismissal; Notice of appeal; Bond on costs on appeal; Designation of contents of record on appeal; Designation of additional portions of record on appeal of appellee Dr. G. F. Keller; Designation of additional portion of record on appeal of appellee Dr. Donald E. Wair and Docket entries, constitute the record on appeal from a judgment of said court in a cause therein numbered Civil 7351, in which Adolph G. Hoffman is appellant and plaintiff and C. H. Halden, Dr. Donald E. Wair, Dr. G. F. Keller and Dr. F. Sydney Hansen are the appellees and defendants; that the said record has been prepared by me in accordance with the designations of contents of record on appeal filed by the appellant and the appellees, and in accordance with the rules of this court.

I further certify that the cost of filing the notice of appeal, \$5.00, has been paid by the appellant.

In Testimony Whereof I have hereunto set my hand and affixed the seal of said court in Portland, in said District, this 13th day of November, 1957.

[Seal]

R. DeMOTT,
Clerk,

By /s/ V. O. BISHOP,
Chief Deputy.

[Endorsed]: No. 15782. United States Court of Appeals for the Ninth Circuit. Adolph G. Hoffman, Appellant, vs., C. H. Halden, Dr. Donald E. Wair, Dr. G. G. Keller and Dr. R. Sydney Hansen, Appellees. Transcript of Record. Appeal from the United States District Court for the District of Oregon.

Filed November 14, 1957.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for the
Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

No. 15782

ADOLPH G. HOFFMAN,

Appellant,

vs.

C. H. HALDEN, DR. DONALD E. WAIR, DR.
G. F. KELLER and DR. F. SYDNEY HAN-
SEN,

Appellees.

DESIGNATION OF CONTENTS OF
RECORD ON APPEAL

The following portions of the record and proceedings are in the opinion of Appellant material to the consideration of the appeal:

1. Second amended complaint filed March 4, 1957;
2. Motion of defendant Dr. Donald E. Wair to dismiss the Second amended complaint filed March 12, 1957;
3. Motion of defendant Dr. G. F. Keller to dismiss the Second amended complaint filed March 22, 1957;
4. Motion of defendant Dr. F. Sydney Hansen and C. H. Halden to dismiss the Second amended complaint filed April 10, 1957;

5. Judgment of dismissal filed October 14th, 1957.

6. Notice of appeal.

ALEXANDER, BUEHNER &
TILBURY,

By /s/ ROGER TILBURY,
Counsel for Appellant.

Affidavit of Service by Mail attached.

Receipt of copy acknowledged.

[Endrosed]: Filed Oct. 24, 1957.

[Title of Court of Appeals and Cause.]

STATEMENT OF POINTS ON WHICH
APPELLANT INTENDS TO RELY ON
APPEAL

Points:

Appellant herein pursuant to rule 75(D) of the Federal Rules of Civil Procedure hereby designates the points on which appellant intends to rely on appeal.

1. The United States District Court erred in entering a judgment of dismissal of the Second Amended Complaint on the ground that said pleading fails to state a claim upon which relief can be granted against said defendants. Appellant will contend that the complaint clearly sets forth a cause of

action on the part of defendants by means of a continuing conspiracy to deprive him of the equal protection of the laws while acting under color and pretense of Oregon law. This constitutes a clear violation of the Civil Rights Law. Appellant will contend that the Court erred in not giving him an opportunity to substantiate these charges in denying him an opportunity to prove these facts to a jury of his peers.

Respectfully submitted,

ALEXANDER, BUEHNER &
TILBURY,

By /s/ ROGER TILBURY,
Counsel for Appellant.

[Endorsed]: Filed Oct. 24, 1957.

